IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1968 OF 2006
IN
APPEAL (LODG) NO. 482 OF 2006
IN
WRIT PETITION NO. 833 OF 2006

Suhas Hari Bhalerao] .. Appellant (Ori.Petitioner)

Versus

Godrej & Boyce Manufacturing Co.Ltd.] .. Respondent (Ori.Respondent)

Mr. P.M. Mokashi for the applicant.

Ms. Sushma Joshi i/b M/s. Haresh Mehta & Co.for respondent.

CORAM: R.M. LODHA &
S.A. BOBDE, JJ.

DATED: 29TH AUGUST, 2006

P.C. :

. The appellant preferred Appeal against the common judgment dated 3rd April, 2006 by filing the present Appeal on 15th June, 2006. Since the Appeal suffers from delay, the present Notice of Motion has been taken out by the appellant for condonation.

2. In paragraph 1 and 2 of the Affidavit in support of the Notice of Motion, the following statements are made:

"1. I say that I am the Appellant in the above matter. I say that I have filed the Appeal challenging the impugned Judgment passed by the Single Judge of the Bombay High Court on 3rd April 2006 in Writ Petition No.833 of 2006. I say that the Hon'ble Single Judge His Lordship Mr. Justice S.U. Kamdar was pleased to hear the arguments of both the sides on the Writ Petition No.833 of 2006 and Writ Petition No.754 of 2006 filed by the Respondent Company on 27th March 2006 and on the said day in the open Court passed Orders on both the Petition dismissing the said Petition. I say that my Advocate applied immediately for certified true copy of the Orders in both the Writ Petition No.833 and 754 of 2006 on 29/3/2006. I say that on 3rd April 2006 both these Writ Petitions were shown on board under the caption of 'pronouncement of Judgment' and on the said day the Hon'ble Court was pleased to pronounce the impugned Judgment dismissing both the Petitions which I came to know much later.

2. I say that I was extremely disturbed with the dismissal of my Writ Petition and was in a depressed mood for considerable period of time. I say that for the said reason I could not get in touch with my Advocate and it was only after a passage of period about 1 to 1 and 1/2 month I contacted my Advocate and instructed him to file the Appeal. I say that the certified true copy of the Order applied on 29/3/2006 was never available and my Advocate waited for the said certified true copy for considerable period. I say that later on it was realised that the impugned Judgment was passed on 3/4/2006. I say that certified true copy was then applied by me on 31/5/2006 and therefore there has been some delay in filing the Appeal. I say that the said delay however is not intentional but due to the aforesaid circumstances, I pray to this Hon'ble Court to condone the delay of 35 days in filing the Appeal. I say that I have been advised that I have very good case in Appeal against the impugned Judgment and in the interest of

> justice this Hon'ble Court may be please to condone the delay in filing this Appeal and the Notice of Motion be made absolute."

3. From the aforestated statements set out in the Affidavit in support of the Notice of Motion, it can not be said that there was want of diligence on the part of the appellant in filing the Appeal against the order dated 3rd April, 2006. The explanation set out in the Affidavit constitutes sufficient cause within the meaning of Section 5 of the Limitation Act.

4. We, accordingly, condone the delay in filing the Appeal. Office is directed to process the Appeal and post it for admission if it does not suffer from any office objection.

. Notice of Motion stands disposed of.

Sd/-
[R.M. LODHA, J.]

Sd/-
[S.A. BOBDE, J.]